

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ZAFER OBEID,

Plaintiff,

Case No. 07-10937

v.

Honorable Arthur J. Tarnow  
Magistrate Judge R. Steven Whelan

MICHAEL CHERTOFF, et al.,

Defendants.

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**ORDER DENYING DEFENDANTS' MOTION TO DISMISS [DE 9], AND GRANTING  
DEFENDANTS' MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY  
[DE 13, 14, and 17]**

Before the Court is Defendants' motion to dismiss [DE 9], on which the Court heard oral argument November 28, 2007. Also before the Court are three Motions by Defendants for leave to file supplemental authority [DE 13, 14, and 17].

At issue in the motion to dismiss is whether this Court has jurisdiction to hear Plaintiff's complaint, which asserts that the delay in approving his application for lawful permanent residency ("I-485") is unreasonable. This Court finds most persuasive the reasoning of *Totonchi v. Gonzales*, 2007 WL 2331937 \*3 (N.D. Ohio Aug. 13, 2007) and determines that the Administrative Procedure Act confers jurisdiction over the plaintiff's claims.

Furthermore, the Court is persuaded by *Kaplan v. Chertoff*, 481 F.Supp.2d 370, 400-01 (E.D. Pa. April 16, 2007) and concludes that it has jurisdiction over the FBI, which has a mandatory duty, by implication, to complete the background check that Plaintiff needs for his I-485 application to be processed.

Defendants' motions for leave to file supplemental authority are granted. However, none of the supplemental authority cited by Defendants is binding on this Court. As noted earlier this month by the Northern District of Illinois,

[i]t appears that no federal circuit court has decided whether the delayed timing, or pace, of adjudicating adjustment of status applications falls under the scope of discretionary power--thus precluding it from judicial review under [8 U.S.C.] § 1252(a)(B)(ii)--and district courts around the country are split on the matter.

*Kamal v. Gonzales*, 2008 WL 597279, 3 (N.D.Ill., March 3, 2008). The district courts in this Circuit are similarly split. Compare *Tang v. Chertoff*, 2007 WL 2462187, \*4 (E.D.Ky., Aug. 29, 2007) (“Although CIS’s ultimate decision on the merits of an I-485 application is discretionary, and therefore beyond the scope of mandamus jurisdiction, CIS has a non-discretionary duty to reach its decision on an I-485 application, whatever that decision may be, within a reasonable time.”) and *Yan Yang v. Gonzales*, 2007 WL 1726501 (S.D.Ohio, June 11, 2007) to *Shen v. Chertoff*, 494 F.Supp.2d 592 (E.D.Mich. 2007) and *Chehab v. Chertoff*, 2007 WL 2372356 (E.D.Mich., July 09, 2007).

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendants’ Motions for leave to file supplementary authority are GRANTED.

IT IS FURTHER ORDERED that Defendants’ Motion to Dismiss is DENIED.

SO ORDERED.

S/ARTHUR J. TARNOW  
Arthur J. Tarnow  
United States District Judge

Dated: March 26, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 26, 2008, by electronic and/or ordinary mail.

S/V. Sims for THERESA E. TAYLOR  
Case Manager